

CIVIL ACTION NO. 04-10544-NMG

FILED
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2007 FEB 27 P 12:17

UNITED STATES DISTRICT COURT
DISTRICT OF MASS.

DYKENS, TIMOTHY

PETITIONER

V.

ALLEN, PETER

RESPONDENT

PETITIONER MOTION OF TRAVERSE
PETITION MEMORANDUM IN SUPPORT OF TRAVERSE

TIMOTHY DYKENS

PO BOX 100

S.WALPOLE MA 02071

DATED: FEBRUARY 22, 2007

STANDARD OF REVIEW

Petitioner agrees that the petition is governed by the AEDPA. However, Petitioner contends that the state court unreasonably determined the facts, and that the facts which the state court found are contradicted by clear and convincing evidence in the record; and that the state courts conclusions of law are contrary to, and consist of an unreasonable application of, it is clearly established law as determined by the U.S. Supreme Court.

EXHAUSTION

The petitioner is timely under the AEDPA and attests that there has been no procedural defaults.

Petitioner asserts that the Respondent clearly and wrongly relies on procedural default in arguing against Petitioner's claim on Federal Habeas corpus, and therefore denies that the alleged procedural default is in place. Furthermore, The rule in question was not firmly established in the state courts decision against the Petitioner, nor has the State ever argued procedural default in state court, and is just now bringing forth this argument before any court.

INCORPORATION BY REFERENCE

Petitioner incorporates by reference the Petition for Writ of Habeas Corpus, along with all supporting documents, including the supporting exhibits and points and authorities previously filed. Further Petitioner incorporates by reference Petitioners Points and Authorities in Support of Traverse, which is being submitted contemporaneously.

PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth herein and in the documents incorporated by reference, Petitioner respectfully requests that the Court:

- (1) grant the writ of habeas corpus, reverse Petitioners conviction, and order a new trial;
- (2) appoint counsel for Petitioner;
- (3) grant all other appropriate relief.

Dated; 02-22-2007

Timothy Dykens

Timothy G. Dykens

Petitioner, In

Propria Persona